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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

JULIO HERNANDEZ,

Defendant.

No. 3-09-70315-BZ

STIPULATION AND ~~PROPOSED~~  
ORDER DOCUMENTING WAIVER

With the agreement of the parties, and with the consent of the defendant, the Court enters this order vacating the preliminary hearing date of June 26, 2009, setting a new preliminary hearing date on July 10, 2009, at 9:30 a.m., before the duty magistrate judge, extending the time for the preliminary hearing under Federal Rule of Criminal Procedure 5.1, and excluding time under the Speedy Trial Act from the date of this stipulation to July 10, 2009. The parties agree and stipulate, and the Court finds and holds, as follows:

1. The defendant, Julio Hernandez, was charged in a complaint dated April 3, 2009 with one count of conspiracy to commit murder in aid of racketeering, one count of conspiracy to

1 commit assault with a dangerous weapon in aid of racketeering, and one count of using or  
2 possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§  
3 1959(a)(5) and (a)(6), 924(c), and 2. Hernandez was transferred into federal custody on April 10,  
4 2009, and presented to Magistrate Judge Maria-Elena James on that day. On April 14, 2009,  
5 Hernandez appeared before Magistrate Judge Bernard Zimmerman and Gilbert Eisenberg, Esq.,  
6 was appointed to represent him. The defendant waived his right to seek bail without prejudice to  
7 any future bail applications, and Judge Zimmerman also scheduled a preliminary hearing date for  
8 April 17, 2009. The defendant remains detained pending further proceedings.

9         2. Following the appointment of Mr. Eisenberg, the parties have been conferring  
10 regarding possible dispositions of this matter, and as a result, the Court, at the request of both  
11 parties, extended the preliminary hearing date to May 8, 2009, June 12, 2009, and most recently  
12 to June 26, 2009. Since then, the parties' have continued to pursue their discussions with the  
13 goal of reaching a disposition prior to the filing of formal charges against the defendant and the  
14 defense has also been conducting its own investigation. However, the parties have not yet been  
15 able to finalize these discussions and the defense is still pursuing its own investigation.

16 Accordingly, the parties have asked the Court to extend the preliminary hearing date to July 10,  
17 2009, pursuant to Federal Rule of Criminal Procedure 5.1, and excluding the time under the  
18 Speedy Trial Act, 18 U.S.C. § 3161.

19         3. Taking into the account the public interest in the prompt disposition of criminal  
20 cases, the above-stated ground is good cause for extending the time limit for a preliminary  
21 hearing under Federal Rule of Criminal Procedure 5.1, for the filing period for an indictment, and  
22 for excluding time under the Speedy Trial Act. Failure to grant the continuance would deny the  
23 defense time for effective preparation and for seeking disposition of this matter on agreed-upon  
24 terms.

25         4. Accordingly, with the consent of the defendant, the Court hereby: (a) vacates the  
26 June 26, 2009 preliminary hearing date and extends the time for a preliminary hearing until July  
27 10, 2009, before the duty magistrate judge, at 9:30 a.m.; and (b) orders that the period from the  
28 date of this order to July 10, 2009 be excluded from the time period for preliminary hearings

under Federal Rule of Criminal Procedure 5.1 and from Speedy Trial Act calculations under 18 U.S.C. § 3161(h)(7)(A) & (B)(iv).

SO STIPULATED:

DATED: June 25, 2009

/s/  
GILBERT EISENBERG, ESQ.  
Attorney for JULIO HERNANDEZ

DATED: June 25, 2009

/s/  
W.S. WILSON LEUNG  
Assistant United States Attorney

IT IS SO ORDERED.

DATED: June 26, 2009

